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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,663	10/02/2000	William E. LeBoeuf	J-2961	3408

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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/677,663

Applicant(s)

LEBOEUF ET AL.

Examiner

Alicia Chevalier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,7-15,17-25,27,28,30,32-39,42-81,83-89 and 91-100 is/are pending in the application.
- 4a) Of the above claim(s) 51-79 and 96-100 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7-15,17-25,27,28,30,32-39,42-50,80,81,83-89 and 91-95 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/15/04 + 9/11/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

RESPONSE TO AMENDMENT

1. Claims 1, 2, 5, 7-15, 17-25, 27, 28, 30, 32-39, 42-81, 83-89 and 91-100 are pending in the application, claims 51-79 and 96-100 are withdrawn from consideration. Claims 3, 4, 6, 16, 26, 29, 31, 40, 41, 82 and 90 have been cancelled.
2. Amendments to the claims, filed on November 15, 2004, have been entered in the above-identified application.

WITHDRAWN REJECTIONS

3. The 35 U.S.C. §112, first paragraph rejections made of record in the office action mailed August 11, 2004, pages 3-5, paragraphs #9 and #11 have been withdrawn due to Applicant's amendment in the response filed November 15, 2004.
4. The 35 U.S.C. §102 rejection of claims 1, 2, 5, 7-9 and 11-13 over Morris (US Patent No. 4,755,413), made of record in the response filed August 11, 2004, pages 5-7, paragraph #12 has been withdrawn due to Applicant's amendment in the response filed November 15, 2004.

REJECTIONS

5. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Claim Rejections - 35 USC § 103

6. Claims 1, 2, 5, 7-15, 17-25, 27, 28, 30, 32-39, 42-50, 80, 81, 83-89 and 91-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plantinga et al. (U.S. Patent No. 3,043,301) in view of Thompson (U.S. Patent No. 4,649,909).

Plantinga discloses a surgical dressing (*col. 1, line 9*).

Regarding Applicant's claim 1, Plantinga discloses a single use processing substrate (*dressing, title*) comprising a liquid permeable thermoplastic film layer (*flexible film, col. 3, lines 21-22 and 53-55*), a liquid absorbent portion (*absorbent pad and material, col. 3, lines 22 and 46*) and a liquid impervious barrier (*backing film, col. 3, lines 18-19 and col. 2, lined 4-9*). The liquid permeable thermoplastic film is continuous with holes (*perforations, col. 3, lines 21-22*) disposed therein (*figures 5 and 6*).

Plantinga fails to disclose that the liquid permeable thermoplastic film layer has a thickness of at least about 5 mils.

Thompson discloses surgical dressing (*title*) with an apertured film to allow the flow of moisture, i.e. liquid (*col. 2, lines 30-34 and 59-61*). The film is very thin and has a thickness of 0.5 to 5 mils (*col. 2, lines 30-31*).

Plantinga and Thompson are analogous because they both disclose surgical dressings.

Plantinga further discloses that the liquid permeable thermoplastic film layer should be quite thin and that there is no limit to film thickness except for strength (*col. 4, lines 29-31*). Therefore, the exact thickness of the liquid permeable thermoplastic film layer is deemed to be a result effective variable with regard to strength. It would require routine experimentation to determine the optimum value of a result effective variable, such as thickness, in the absence of a

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showing of criticality in the claimed thickness. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated by the disclosure of Thompson to use a film thickness of about 5 mils because Thompson discloses that very thin films have a thickness of 0.5 to 5 mils (*col. 2, lines 30-31*). One would have been motivated to use the higher end of Thompson's range, i.e. about 5 mils, because it is well known that thicker sheets are stronger. It is desirable to use a stronger film layer so that the dressing does not tear.

Regarding Applicant's claim 2, Plantinga discloses that the liquid absorbent portion is disposed between the film layer and the liquid impervious barrier (*figure 5 and 6*).

Regarding Applicant's claim 5, Plantinga discloses that the liquid permeable thermoplastic film layer is selected from the group consisting of polyolefins, polyesters, polystyrene, polyvinyl alcohol, polyvinyl chloride, nylon, polyacrylonitrile, acrylonitrile-butadiene-styrene copolymer (ABS) and ethylvinylacetate (*col. 4, lines 14-28*).

Regarding Applicant's claims 7 and 8, the limitations "the holed in the film layer are formed by punching or by perforating" are a method limitations and do not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Plantinga discloses perforations in the liquid permeable thermoplastic film layer (*col. 3, lines 21-22*).

Regarding Applicant's claims 9 and 10, Plantinga discloses that the liquid absorbent portion comprises cellulosic material comprising tissue (*col. 2, line 63*).

Regarding Applicant's claims 11-13, Plantinga discloses that the liquid impervious barrier is formed of a continuous sheet (*figures 5 and 6*) of thermoplastic resin selected from the group consisting of polyolefins, polyesters, polystyrene, polyvinyl alcohol, polyvinyl chloride, nylon, polyacrylonitrile, acrylonitrile-butadiene-styrene copolymer (ABS) and ethylvinylacetate (*col. 4, lines 14-28*).

Regarding Applicant's claim 14, Plantinga discloses a single use processing substrate (*dressing, title*) comprising a top surface (*flexible film, col. 3, lines 21-22 and 53-55*), a liquid absorbent portion (*absorbent pad and material, col. 3, lines 22 and 46*) and a liquid impervious barrier surface (*backing film, col. 3, lines 18-19 and col. 2, lined 4-9*). The top surface comprising a continuous thermoplastic film with holes (*perforations, col. 3, lines 21-22*) disposed therein (*figures 5 and 6*). It is noted that Plantinga fails to disclose that the thermoplastic film has a thickness of at least about 5 mils. However, Thompson discloses these limitations as addressed above.

Regarding Applicant's claim 15, Plantinga discloses that the liquid absorbent portion is disposed between the top and barrier surfaces (*figure 5 and 6*).

Regarding Applicant's claim 17, Plantinga discloses that the thermoplastic film resin is selected from the group consisting of polyolefins, polyesters, polystyrene, polyvinyl alcohol, polyvinyl chloride, nylon, polyacrylonitrile, acrylonitrile-butadiene-styrene copolymer (ABS) and ethylvinylacetate (*col. 4, lines 14-28*).

Regarding Applicant's claims 18 and 19, the limitations "the holed in the film layer are formed by punching or by perforating" are a method limitations and do not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Plantinga discloses perforations in the liquid permeable thermoplastic film layer (*col. 3, lines 21-22*).

Regarding Applicant's claims 20 and 21, Plantinga discloses that the liquid absorbent portion comprises cellulosic material comprising tissue (*col. 2, line 63*).

Regarding Applicant's claims 22-23, Plantinga discloses that the barrier surface is formed of a continuous sheet (*figures 5 and 6*) of thermoplastic resin selected from the group consisting of polyolefins, polyesters, polystyrene, polyvinyl alcohol, polyvinyl chloride, nylon, polyacrylonitrile, acrylonitrile-butadiene-styrene copolymer (ABS) and ethylvinylacetate (*col. 4, lines 14-28*).

Regarding Applicant's claim 25, Plantinga discloses a single use processing substrate (*dressings, title*) comprising a first material (*flexible film, col. 3, lines 21-22 and 53-55*), second material having a liquid absorbent portion (*absorbent pad and material, col. 3, lines 22 and 46*) and a third material having liquid impervious portion (*backing film, col. 3, lines 18-19 and col. 2, lined 4-9*). The first material comprising a continuous thermoplastic film having a liquid permeable surface with a plurality holes (*perforations, col. 3, lines 21-22*) disposed therein

(*figures 5 and 6*). It is noted that Plantinga fails to disclose that the first material has a thickness of at least about 5 mils. However, Thompson discloses these limitations as addressed above.

Regarding Applicant's claim 27, Plantinga discloses that the first, second and third materials form first, second and third layers, respectively (*figures 5 and 6*).

Regarding Applicant's claims 28 and 30, Plantinga discloses that the first material is a thermoplastic film resin selected from the group consisting of polyolefins, polyesters, polystyrene, polyvinyl alcohol, polyvinyl chloride, nylon, polyacrylonitrile, acrylonitrile-butadiene-styrene copolymer (ABS) and ethylvinylacetate (*col. 4, lines 14-28*).

Regarding Applicant's claims 32 and 33, the limitations "the holed in the film layer are formed by punching or by perforating" are a method limitations and do not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Plantinga discloses perforations in the liquid permeable thermoplastic film layer (*col. 3, lines 21-22*).

Regarding Applicant's claims 34 and 35, Plantinga discloses that the second material comprises cellulosic material comprising tissue (*col. 2, line 63*).

Regarding Applicant's claims 36-38, Plantinga discloses that the third material is formed of a continuous sheet (*figures 5 and 6*) of thermoplastic resin selected from the group consisting of polyolefins, polyesters, polystyrene, polyvinyl alcohol, polyvinyl chloride, nylon,

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polyacrylonitrile, acrylonitrile-butadiene-styrene copolymer (ABS) and ethylvinylacetate (*col. 4, lines 14-28*).

Regarding Applicant's claim 39, Plantinga discloses a single use processing substrate (*dressing, title*) comprising a first means (*flexible film, col. 3, lines 21-22 and 53-55*), second means having a liquid absorbent portion (*absorbent pad and material, col. 3, lines 22 and 46*) and a third means having liquid impervious portion (*backing film, col. 3, lines 18-19 and col. 2, lined 4-9*). The first means providing a continuous thermoplastic film having a liquid permeable surface with a plurality holes (*perforations, col. 3, lines 21-22*) disposed therein (*figures 5 and 6*). It is noted that Plantinga fails to disclose that the first means has a thickness of at least about 5 mils. However, Thompson discloses these limitations as addressed above.

Regarding Applicant's claims 42 and 43, Plantinga discloses that the first means is a continuous thermoplastic film resin selected from the group consisting of polyolefins, polyesters, polystyrene, polyvinyl alcohol, polyvinyl chloride, nylon, polyacrylonitrile, acrylonitrile-butadiene-styrene copolymer (ABS) and ethylvinylacetate (*col. 4, lines 14-28*).

Regarding Applicant's claims 44 and 45, the limitations "the holed in the film layer are formed by punching or by perforating" are a method limitations and do not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the

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claimed method because Plantinga discloses perforations in the liquid permeable thermoplastic film layer (*col. 3, lines 21-22*).

Regarding Applicant's claims 46 and 47, Plantinga discloses that the second means comprises cellulosic material comprising tissue (*col. 2, line 63*).

Regarding Applicant's claims 48-50, Plantinga discloses that the third means is formed of a continuous sheet (*figures 5 and 6*) of thermoplastic resin selected from the group consisting of polyolefins, polyesters, polystyrene, polyvinyl alcohol, polyvinyl chloride, nylon, polyacrylonitrile, acrylonitrile-butadiene-styrene copolymer (ABS) and ethylvinylacetate (*col. 4, lines 14-28*).

Regarding Applicant's claim 80, Plantinga discloses a single use processing substrate (*dressing, title*) comprising a first material (*flexible film, col. 3, lines 21-22 and 53-55*), second material having a liquid absorbent portion (*absorbent pad and material, col. 3, lines 22 and 46*) and a third material having liquid impermeable surface (*backing film, col. 3, lines 18-19 and col. 2, lined 4-9*). The first material comprising a continuous thermoplastic film having a liquid permeable surface with a plurality holes (*perforations, col. 3, lines 21-22*) disposed therein (*figures 5 and 6*). It is noted that Plantinga fails to disclose that the first material has a thickness of at least about 5 mils. However, Thompson discloses these limitations as addressed above.

Regarding Applicant's claim 81, Plantinga discloses that the liquid absorbent portion is disposed between the liquid permeable surface and the liquid impermeable surface (*figures 5 and 6*).

Regarding Applicant's claim 83, Plantinga discloses that the first material is a thermoplastic film resin selected from the group consisting of polyolefins, polyesters,

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polystyrene, polyvinyl alcohol, polyvinyl chloride, nylon, polyacrylonitrile, acrylonitrile-butadiene-styrene copolymer (ABS) and ethylvinylacetate (*col. 4, lines 14-28*).

Regarding Applicant's claims 84 and 85, the limitations "the holed in the film layer are formed by punching or by perforating" are a method limitations and do not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Plantinga discloses perforations in the liquid permeable thermoplastic film layer (*col. 3, lines 21-22*).

Regarding Applicant's claims 86 and 87, Plantinga discloses that the second material comprises cellulosic material comprising tissue (*col. 2, line 63*).

Regarding Applicant's claim 88, Plantinga discloses a single use processing substrate (*dressings, title*) comprising a first layer (*flexible film, col. 3, lines 21-22 and 53-55*), second layer having a liquid absorbent portion (*absorbent pad and material, col. 3, lines 22 and 46*) and a third layer having liquid impermeable surface (*backing film, col. 3, lines 18-19 and col. 2, lined 4-9*). The first layer comprising a continuous thermoplastic film having a liquid permeable surface with a plurality holes (*perforations, col. 3, lines 21-22*) disposed therein (*figures 5 and 6*). It is noted that Plantinga fails to disclose that the first layer has a thickness of at least about 5 mils. However, Thompson discloses these limitations as addressed above.

Regarding Applicant's claim 89, Plantinga discloses that the second layer is disposed between the first and third layers (*figures 5 and 6*).

Regarding Applicant's claim 91, Plantinga discloses that the first layer is a thermoplastic film resin selected from the group consisting of polyolefins, polyesters, polystyrene, polyvinyl alcohol, polyvinyl chloride, nylon, polyacrylonitrile, acrylonitrile-butadiene-styrene copolymer (ABS) and ethylvinylacetate (*col. 4, lines 14-28*).

Regarding Applicant's claims 92 and 93, the limitations "the holed in the film layer are formed by punching or by perforating" are a method limitations and do not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Plantinga discloses perforations in the liquid permeable thermoplastic film layer (*col. 3, lines 21-22*).

Regarding Applicant's claims 94 and 95, Plantinga discloses that the second layer comprises cellulosic material comprising tissue (*col. 2, line 63*).

ANSWERS TO APPLICANT'S ARGUMENTS

7. Applicant's arguments in the response filed November 15, 2004 regarding the previous rejections of record have been considered but are moot since the rejections have been withdrawn.

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Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alicia Chevalier

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